DOCUMENT RESUME

ED 300 166 RC 016 775

AUTHOR Shannon, Pam
TITLE Legislation on Child Abuse Reports on American Indian Children. Assembly Bill 315, Relating to Child Abuse and Neglect Reports Pertaining to Indian Children. Wisconsin Legislative Council Report No. 9 to the 1987 Legislature.
INSTITUTION Wisconsin State Legislative Council, Madison.
REPORT NO RL-87-9
PUB DATE 22 May 87
NOTE 17p.; For a related document, see RC 016 776.
PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Advisory Committees; *Agency Role; *American Indians; Child Abuse; Child Neglect; *Confidentiality; Confidential Records; Professional Training; Public Agencies; Social Agencies; *State Legislation; *Tribal Sovereignty
IDENTIFIERS *Child Abuse and Neglect Reporting; *Wisconsin

ABSTRACT

This paper describes meetings of the American Indian Study Committee of the Wisconsin Legislative Council and background related to 1987 Assembly Bill 315 on Indian child abuse and neglect reports. At several 1985 and 1986 meetings, the committee (1) discussed problems resulting from requirements that "mandatory reporters" of child abuse also must contact a tribal government; (2) considered the development of cooperative agreements between county agencies and tribal governing bodies concerning abuse and neglect investigations; and (3) examined related aspects of confidentiality. As a result of these meetings, Assembly Bill 315 revises previous statutes as follows: (1) eliminates previous requirements that mandatory reporters and police receiving a child abuse report must contact a tribal government; (2) requires the county social services department receiving an abuse report to notify a specified tribal agent of the report's existence and the child's name and address; (3) requires confidentiality of child abuse and neglect reports and records, except for disclosure to a tribal social services department, court, or attorney; (4) makes continuing education and training programs offered by the state Department of Health and Social Services (DHSS) and county departments available to tribal social service departments; and (5) requires DHSS to provide annually a current list of tribal agents to county social services departments. The report includes committee and council votes and a list of all materials received by the committee pertaining to this subject. (SV)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED300166

WISCONSIN LEGISLATIVE COUNCIL

REPORT NO. 9 TO THE 1987 LEGISLATURE

LEGISLATION ON CHILD ABUSE REPORTS ON AMERICAN INDIAN CHILDREN

1987 ASSEMBLY BILL 315, RELATING TO CHILD ABUSE AND NEGLECT REPORTS PERTAINING TO INDIAN CHILDREN

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Bonnie Reese

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Legislative Council Staff
May 11, 1987
(Corr. May 22, 1987)

State Capitol
Madison, Wisconsin

RL 87-9

RC016775

BEST COPY AVAILABLE

WISCONSIN LEGISLATIVE COUNCIL
s. 13.81, Stats.

OFFICERS

Chairperson
TOM LOFTUS
Speaker of the Assembly
Sun Prairie

Vice-Chairperson
FRED A. RISSER
President of the Senate
Madison

Secretary
BETTY JO NELSEN
Representative
Shorewood

SENATORS

J.M. DAVIS
Waukesha

SUSAN ENGELEITER
Menomonee Falls

GARY R. GEORGE
Milwaukee

JAMES E. HARSDORF
Beldenville

RICHARD T. KREUL
Fennimore

MORDECAI LEE
Milwaukee

RODNEY MOEN
Whitehall

JOHN O. NORQUIST
Milwaukee

JOSEPH STROHL
Racine

REPRESENTATIVES

JEANNETTE BELL
West Allis

GORDON R. BRADLEY
Oshkosh

DAVID E. CLARENBACH
Madison

MARCIA P. COGGS
Milwaukee

THOMAS HAUKE
West Allis

EARL F. MC ESSY
Fond du Lac

DAVID PROSSER
Appleton

MARLIN D. SCHNEIDER
Wisconsin Rapids

LOUISE TESMER
Milwaukee

BONNIE REESE, Executive Secretary, Legislative Council, 147 North, Capitol

AMERICAN INDIAN STUDY COMMITTEE

OFFICERS

Chairperson
SHARON K. METZ (1)
Representative
Green Bay

Vice-Chairperson
JAMES SCHLENDER
Public Member
Hayward

Secretary
JAMES E. HARSDORF
Senator
Beldenville

REPRESENTATIVES

G. SPENCER COGGS
Milwaukee

JAMES HOLPERIN
Eagle River

THOMAS D. OURADA
Antigo

WILLIAM PLIZKA (1)
Mellen

CATHY S. ZEUSKE
Shawano

SENATOR

LLOYD H. KINCAID
Crandon

PUBLIC MEMBERS

RICHARD L. GURNOE
Bayfield

GERALD L. HILL
Oneida

RITA KESHENA
Keshena

EUGENE TAYLOR
Webster

KIMBERLY VELE
Evansville

COMMITTEE STAFF: Pam Shannon, Staff Attorney; Mark Patronsky, Senior Staff Attorney; and Michelle Kroll, Secretarial Staff.

(1) As of January 5, 1987, no longer a member of the Committee, since not serving in the 1987 Legislature.

AMERICAN INDIAN STUDY COMMITTEE

TECHNICAL ADVISORY COMMITTEE

ALAN CALDWELL (1)
Madison

CHUCK CONNORS
Madison

BOB MILLER
Green Bay

JOHN NIEMISTO
Madison

JON SKAVLEM
Madison

THEODORE E. STEPHENSON, JR.
Madison

NANCIE YOUNG
Madison

(1) Designated by DPI to replace Arnold M. Chandler on January 7, 1987.

WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 9 TO THE 1987 LEGISLATURE*

LEGISLATION ON CHILD ABUSE REPORTS ON AMERICAN INDIAN CHILDREN

CONTENTS

		Page
PART I:	KEY PROVISIONS OF 1987 ASSEMBLY BILL 315	3
PART II:	COMMITTEE ACTIVITY	5
	A. Assignment	5
	B. Summary of Meetings	5
	C. Committee and Council Votes	8
	D. Staff Materials	9
PART III:	DESCRIPTION OF 1987 ASSEMBLY BILL 315	11
	A. Background	11
	B. Major Provisions	12
APPENDIX:	COMMITTEE MATERIALS	15

*Prepared by: Pam Shannon, Staff Attorney, Legislative Council Staff.

PART I

KEY PROVISIONS OF 1987 ASSEMBLY BILL 315

Assembly Bill 315 revises the statutes related to child abuse and neglect reports pertaining to Indian children. The Bill:

1. Eliminates the current requirement that persons who must report suspected child abuse or neglect (known as "mandatory reporters") must also contact a tribal government in the case of an Indian child.

2. Eliminates the current requirement that sheriffs or police departments who receive a child abuse report involving an Indian child must refer the report to a tribal government.

3. Replaces those requirements with a provision requiring a county social services department which receives a child abuse or neglect report involving an Indian child to notify a specified tribal agent of the existence of such a report and the name and address of the Indian child who is the subject of the report.

4. Provides that the notice provided to a tribal agent about a child abuse or neglect report must be kept confidential, except that the notice may be disclosed to a tribal social services department.

5. Authorizes disclosure of otherwise confidential child abuse and neglect records and reports to appropriate staff of a tribal social services department or to a tribal court or attorney.

6. Makes continuing education and training programs offered by the Department of Health and Social Services (DHSS) and county departments available to tribal social services departments.

7. Requires the DHSS to annually provide a current list of all tribal agents in the state to county social services departments in counties which have either an Indian reservation or a Bureau of Indian Affairs (BIA) service area for the Winnebago Tribe.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The American Indian Study Committee (AISC) is a permanent statutory committee established under s. 13.83 (3), Stats. The Committee is directed by statute to:

> ...study the problems and develop specific recommendations and legislative proposals relating to American Indians and the various Indian tribes in this state.

The membership of the AISC, appointed by the Legislative Council, consists of eight legislative members from the Senate and Assembly and six Public Members appointed from names submitted by the Wisconsin Indian tribes and the Great Lakes Inter-Tribal Council. The Committee is assisted by a Technical Advisory Committee composed of a representative of each of the following state departments: Public Instruction; Health and Social Services; Industry, Labor and Human Relations; Justice; Natural Resources; Revenue; and Transportation.

B. SUMMARY OF MEETINGS

In the 1985 Legislative Session, the AISC discussed a wide variety of subjects. As a result of its deliberations, the AISC developed the following three proposals which it approved and submitted to the Legislative Council with a recommendation for introduction in the 1987 Legislature:

1. 1987 Assembly Bill 315, relating to child abuse and neglect reports pertaining to Indian children, which is the subject of this report.

2. 1987 Assembly Bill 316, relating to the definition of "American Indian" for purposes of minority contracting, which is described in Wisconsin Legislative Council Report No. 10 to the 1987 Legislature.

3. WLCS: 673/3, relating to creating a Division of Indian Affairs in the Department of Administration (DOA), which was placed on the table by the Legislative Council at its March 25, 1987 meeting.

The discussions and actions of the AISC are summarized below.

At its April 19, 1985 meeting, the Committee heard testimony from DHSS staff regarding problems resulting from the current requirement that persons required to report child abuse must inform a tribal government when an Indian child is the subject of a child abuse report. The Committee discussed whether to require a county and tribe to enter into a cooperative agreement before a tribe could receive such child abuse reports and whether the county, the tribe, or both, should be involved in conducting the actual child abuse investigation.

The Committee also discussed MEMO NO. 5, Issues Relating to Creating a State Indian Organization, dated April 12, 1985. The Committee discussed extensively the current organizations and individuals within state government that have responsibilities related to Indians. The Committee discussed how the responsibilities of these organizations or individuals might be expanded to provide additional governmental services to Indian tribes and individuals.

At its June 14, 1985 meeting, the AISC discussed MEMO NO. 9, Options for Structuring Indian-State Relations, dated June 7, 1985. The Committee also discussed a study prepared by the North Dakota Indian Affairs Commission, which contained information on Indian organizations in 25 states.

At its August 16, 1985 meeting, the Committee heard presentations by Wallace Coffey, Director of the Nebraska Indian Commission, and Roger Head, Director of the Minnesota Indian Affairs Council. The Committee discussed extensively the budgets and functions of these two state Indian organizations. The Committee also conducted a public hearing on the subject of creating a state Indian organization.

At its October 23, 1985 meeting, the Committee again considered the child abuse issue and reviewed a preliminary bill draft which deleted the current requirement that a mandatory reporter inform a tribal government of child abuse cases involving Indian children. The draft instead provided that a county agency and a tribal governing body could enter into a cooperative agreement regarding the receipt of child abuse and neglect reports, the investigation of child abuse and neglect allegations and the provision of services to Indian children.

The Committee also discussed WLCS: 673/1, the first draft of a proposal relating to creating a Division of Indian Affairs in the DOA. The Committee decided that it would be useful to circulate the draft extensively and obtain additional comments on the draft before taking final action.

At its January 17, 1986 meeting, the Committee reviewed a subsequent child abuse draft which stated the legislative intent to encourage the

development of cooperative agreements between county agencies and tribal governing bodies regarding investigations of abuse or neglect of Indian children. The draft also provided that, under a cooperative county-tribal agreement, some or all of the duties of a county agency could be delegated to an agency appointed by a tribe to conduct child abuse and neglect investigations. As with the earlier draft, this draft also repealed the requirement that a mandatory child abuse reporter must notify the tribe when an Indian child is the subject of a report and gave responsibility for notifying the tribe to the county department that receives the report from the mandatory reporter.

Because the Committee could not reach a consensus regarding the use of cooperative agreements and the confidentiality of child abuse reports, Chairperson Metz directed Committee staff to form a working group with representatives of the DHSS, the tribes and other interested persons, to develop another version of draft legislation which would address concerns regarding cooperative agreements and confidentiality of child abuse reports.

The Committee also discussed and took final action on WLCS: 673/3, relating to creating a Division of Indian Affairs in the DOA.

At its April 18, 1986 meeting, the Committee reviewed the child abuse bill draft prepared by the working group established at the previous Committee meeting. It was explained that the working group had concluded that informal agreements regarding child abuse investigations already exist between certain counties and tribes and that mandating cooperative agreements between the counties and tribes which do not already have good working relationships would be counterproductive. Therefore, instead of utilizing cooperative agreements, the working group's draft provided that a county agency which receives a child abuse or neglect report involving an Indian child would be required to notify the tribal agent designated by each tribe and band, under the Federal Indian Child Welfare Act (ICWA), of the existence and contents of the report. It was noted that these tribal agents are already designated to receive certain kinds of notices under the Federal ICWA and that they would be logical persons to receive notice of child abuse and neglect reports involving Indian children.

The Committee also discussed whether tribes should be informed of reports involving Indian children who reside outside of the boundaries of an Indian reservation or outside a BIA service area for the Winnebago Tribe. The Committee also discussed whether the definition of "Indian child" from the Federal ICWA should be used.

The Committee also discussed the issue of definitions of "American Indian" with special emphasis on minority highway contracting. The Committee agreed that further discussion of this subject was necessary.

At its November 14, 1986 meeting, the Committee reviewed a subsequent child abuse draft which incorporated a definition of "Indian child" which is based on the Federal ICWA definition of that term. The draft also limited the reporting requirement to children who are known to be Indian children and who reside anywhere in a county which has wholly or partially within its boundaries either an Indian reservation or a BIA service area for the Winnebago Tribe. The draft also made provisions for which tribal agent a county social services department should notify, based on whether the county knows with which tribe or band the child is affiliated. The draft also provided that the notice to a tribal agent could only include the fact that a report has been received about a particular Indian child and the name and address of that child. The draft permitted the tribal agent to disclose the notice to a tribal social services department. The tribal social services department could then contact the county department to receive further information.

It was suggested that the provision of the draft which made child abuse and neglect records and reports available to tribal courts should also make those items available to other tribal adjudicative bodies authorized to hear child welfare matters, since not all tribes have tribal courts at the present time.

Chairperson Metz directed staff to prepare a final version of the bill draft (WLCS: 684/5), incorporating the suggested changes, to be submitted to the Committee for approval by mail ballot. The Committee and Legislative Council votes on the proposal are set forth in Part II, C, of this Report.

The Committee also held further discussions on the subject of minority highway contracting and expanded its discussion into the provisions of the Department of Development's Minority Business Certification Program that affects American Indians. Committee members emphasized that tribes determine their own membership and that the statutes should reflect this fact. Chairperson Metz directed staff to prepare a bill draft to clarify s. 560.036, Stats., to provide explicitly that the governing body of a tribe is responsible for documenting whether a person is recognized as an Indian.

At its December 17, 1986 meeting, the Committee discussed the bill draft (WLCS: 136/1) on the definition of "American Indian," which became 1987 Assembly Bill 316.

C. COMMITTEE AND COUNCIL VOTES

By a mail ballot dated November 28, 1986, the AISC recommended that the Legislative Council introduce WLCS: 684/5 by a vote of Ayes, 12 (Reps.

Metz, S. Coggs, Holperin, Ourada and Zeuske; Sens. Harsdorf and Kincaid; and Public Members Schlender, Gurnoe, Keshena, Taylor and Vele); Noes, 1 (Public Member Hill); and Not Voting, 1 (Rep. Plizka).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 18 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, M. Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 3 (Rep. Clarenbach; Sens. George and Harsdorf).

D. STAFF MATERIALS

The Appendix lists all materials received by the Committee, relating to the subject matter contained in Assembly Bill 315. Of particular interest is MEMO NO. 12, Child Abuse and Neglect Investigations, dated October 22, 1985, which provides a summary of current law regarding reporting child abuse and neglect to Indian tribes. This and other materials listed in the Appendix are available at the Legislative Council offices.

PART III

DESCRIPTION OF 1987 ASSEMBLY BILL 315

A. BACKGROUND

In 1983, the Legislature enacted 1983 Wisconsin Act 172, which made a number of changes in the requirements in s. 48.981, Stats., relating to reporting and investigating suspected or threatened child abuse or neglect.

Among other changes, Act 172 expanded the list of persons who are required to report suspected or threatened child abuse and neglect (known as "mandatory reporters"). Also, Act 172 provided that a mandatory reporter making a child abuse report involving an Indian child to a county social services department must also inform "the tribal government" of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that child abuse or neglect will occur.

Act 172 also directed sheriffs and police departments to refer to "the tribal government," as well as to the county department, all child abuse or neglect cases involving Indian children reported to them.

The provisions in Act 172 requiring reporting of child abuse and neglect to tribal governments were included in response to concerns that Indian tribes did not routinely receive information, which they might be interested in, regarding reports of possible abuse or neglect of Indian children. Subsequent to the enactment of Act 172, representatives of the DHSS and other persons raised the following questions regarding these requirements:

1. How should the term "Indian child" be defined, since no definition was provided in Act 172?

2. Is it appropriate to require a mandatory reporter, rather than a county department or law enforcement agency, to report suspected child abuse or neglect to a tribal government?

3. If it is appropriate to so require, how does the mandatory reporter verify whether a child is in fact an Indian child and how will the reporter know to which tribe the report should be referred, especially if the child does not reside on or near an Indian reservation and his or her tribal affiliation is unknown?

4. How does the mandatory reporter ascertain which tribal official within the tribal government should receive the report?

5. What is the tribal official or tribal government supposed to do with the report once it is received?

6. How will the confidentiality of the sensitive information contained in the report be maintained, if tribal officials, and perhaps other persons, have access to the report?

7. Is it appropriate for the tribal government or tribal officials to receive these reports at all or would some other tribal body, such as a tribal social services department, be a more appropriate recipient of the report?

8. Should a county and a tribe be required to enter into a cooperative agreement in order for a tribe to receive child abuse reports involving Indian children?

9. Who is responsible for investigating the allegations of child abuse or neglect, once a report has been received, the county, the tribe, or both?

Following discussion of these and other related issues, the Committee developed and considered several versions of draft legislation to address these concerns, prior to approving the legislation which became 1987 Assembly Bill 315. These earlier drafts are summarized in Part II, B, of this Report, "Summary of Committee Meetings."

B. MAJOR PROVISIONS

Assembly Bill 315 deletes the requirement in current law that persons who are required to report suspected child abuse or neglect must inform the tribal government, as well as a county social services department, of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur. The Bill also eliminates the requirement in current law that a sheriff or police department must refer all child abuse cases reported to it involving Indian children to the tribal government, in addition to a county department.

In the Bill, these provisions of current law are replaced by a provision requiring a county social services department which receives a child abuse or neglect report involving an Indian child to notify a tribal agent of the existence of such a report. A tribal agent is a person already designated by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Federal ICWA. The definition "Indian child" in the Bill is based on the definition of that term in the Federal ICWA. Under the Bill, "Indian child" is defined to

mean any unmarried person under age 18 who is affiliated with a Wisconsin Indian tribe or band either as a member of the tribe or band or as a person who is both eligible for membership and who is the biological child of a member of the tribe or band.

Assembly Bill 315 requires a county social services department which receives a child abuse report pertaining to an Indian child to provide notice to a tribal agent that a report has been received about that child if: (1) the county has either an Indian reservation or BIA service area wholly or partially within its boundaries; and (2) the child is known to be an Indian child and resides in the county. The notice shall consist only of the name and address of the child and the fact that a report has been received about that child.

The Bill specifies which tribal agent is to be notified as follows. If the child's tribal affiliation is known, the tribal agent for the child's tribe or band is notified. If the child's tribal affiliation is unknown, the tribal agent for the reservation or BIA service area where the child resides is notified. If the child's tribal affiliation is unknown and the child does not reside on a reservation or BIA service area land within the county, the tribal agent for any reservation or BIA service area in the county which receives the report may be notified.

The Bill further provides that the notice provided to a tribal agent regarding a child abuse report involving an Indian child shall be confidential. This is consistent with current law which requires that all reports and records regarding child abuse and neglect maintained by the DHSS and other agencies and individuals must be confidential. The Bill provides, however, that a tribal agent who receives a notice regarding a child abuse report may disclose the notice to a tribal social services department.

Assembly Bill 315 also permits disclosure of actual child abuse and neglect reports and records, as distinguished from the notice, to appropriate staff of a tribal social services department. Therefore, when a tribal agent notifies a tribal social services department that a report has been made concerning an Indian child, the tribal social services department may request the county department to disclose otherwise confidential child abuse records and reports to it.

The Bill also permits disclosure of otherwise confidential child abuse records and reports to a tribal court or other tribal adjudicative body exercising jurisdiction over a child, for use in proceedings in which abuse or neglect of the child who is the subject of such record or report is an issue. These records and reports may also be disclosed to an attorney representing the interests of an Indian tribe or band or an Indian child in such proceedings.

The Bill makes continuing education and training programs relating to child abuse and neglect, offered by the DHSS and county social services departments, available to the staff of tribal social services departments.

Finally, the Bill requires the DHSS to annually provide a current list of all tribal agents in the state to the county social services department in each county which has an Indian reservation or BIA service area partially or wholly within its boundaries.

PS:wf;kja

APPENDIX

COMMITTEE MATERIALS

Staff Materials

1. Memorandum, Reporting Abuse or Neglect of Indian Children (April 18, 1985).

2. MEMO NO. 12, Child Abuse and Neglect Investigations (October 22, 1985).

Other Materials

1. Memorandum from Nancie Young, American Indian Affairs Specialist, Department of Health and Social Services (DHSS), to Mark Hoover, Director, Office of Internal Operations, DHSS, Revision of Wisconsin Statute 48.981--Abused or Neglected Children (April 19, 1985).

2. Memorandum from Representative Sharon K. Metz, Chairperson, to persons interested in Indian child abuse and neglect reporting, Tribal Involvement in Child Abuse and Neglect Investigations (November 15, 1985).

3. Letter from Linda Reivitz, Secretary, DHSS, to Representative Sharon K. Metz, relating to proposed revisions to WLCS: 684/2 (January 13, 1986).